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Supreme Court, U.S.
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In the Supreme Court of the United States

Term, 1970

No. 1402

PREFERRED RISK MUTUAL INSURANCE CO.,
Petitioner

vs.

LYDIA MARTIN, AMERICAN ARBITRATION ASSOCIATION AND STANTON BERKOWITZ,
Respondents

PETITION FOR A WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

Harold B. Macus, Esquire, and Bertram Bennett, Esquire, on behalf of Preferred Risk Mutual Insurance Company pray that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered in the above case on January 9, 1970.

OPINIONS BELOW

The opinion of the Court of Common Pleas is unreported. The opinion of the Supreme Court of Pennsylvania is reported at 436 Pa. 374.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was made and entered on January 9, 1970, and copy thereof is appended to this petition in the Appendix at page 7. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

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QUESTION PRESENTED

Respondent, Lydia Martin, filed a claim with respondent, American Arbitration Association, against Petitioner under the Uninsured Motorist provisions of an insurance policy. Petitioner filed a Complaint in equity seeking to enjoin the respondents (including the arbitrator) from hearing the claim of respondent, Lydia Martin, on the ground that she was not an "insured" under the policy and, therefore, not entitled to the benefits thereunder. The Court of Common Pleas dismissed the Complaint in Equity and on appeal, the Supreme Court of Pennsylvania affirmed. The question presented is:

> Whether the refusal of the Courts of Pennsylvania to accept jurisdiction over the equity action brought by Petitioner constitutes a violation of the due process requirements of Amendments V and XIV to the Constitution of the United States.

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LAW INVOLVED

The pertinent portions of Amendments V and XIV to the Constitution of the United States.

STATEMENT

Petitioner instituted this suit in equity in the Court of Common Pleas of Philadelphia County, Pennsylvania to enjoin respondents from holding hearing on the uninsured motorist claim of respondent, Lydia Martin. In its Complaint, petitioner alleged that: on or about September 8, 1967, there was in effect a policy of insurance issued by Petitioner to one Eli Swartz; under the uninsured motorist provisions of said policy, coverage was extended to "the named insured (Eli Swartz) and, while resident of the same household, the spouse of such named insured and the relatives of either"; on April 22, 1969, respondent, Lydia Martin, filed a demand for Arbitration of a claim against Petitioner under the uninsured motorist provisions of the said policy to recover for injuries allegedly suffered in an accident caused by the negligence of an uninsured motorist, in whose car she was a passenger at the time of the said accident; respondent, Lydia Martin, was a foster child of Eli Swartz and therefore was not a "relative" within the meaning of the policy and had no standing to make a claim against Petitioner.

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Law Involved

Respondent, Lydia Martin, thereafter filed preliminary objections in the nature of, first, a Petition Raising a Question of Jurisdiction on the ground that the Arbitrator had sole jurisdiction to decide the question of coverage; second, a Demurrer on the ground that respondent, Lydia Martin, as a foster child, was within the coverage of the policy, and third, a Motion To Strike Off because of lack of conformity to Rule of Court based upon failure of Petitioner to attach a copy of the policy to its Complaint.

The lower Court sustained the preliminary objections on the ground that the Supreme Court of Pennsylvania in precedent decisions had mandated that all questions arising under uninsured motorist provisions of an insurance policy were within the sole jurisdiction of the arbitrator.

Petitioner appealed to the Supreme Court of Pennsylvania on the ground that the refusal by the lower Court to take jurisdiction of the equity action constituted a violation of the due process requirements of Amendments V and XIV to the Constitution of the United States. In support of this contention, both in its brief and during argument before the Court, Petitioner urged that the Courts are constrained by due process to decide the issue of whether a person making claim under a contract was a party to or intended beneficiary of the said contract, relying upon the decision of this Court in *John Wiley & Sons, Inc. vs. Livingston,* 376 U.S. 543, 84 S. Ct. 909 (1964), and related decisions. The Supreme Court of Pennsylvania in affirming the decree of the lower Court acknowledged the due process requirement that the Courts accept Jurisdiction of and adjudicate the question of

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whether one is a party to or the intended beneficiary of a contract. However, the Supreme Court narrowly circumscribed this right by holding that it is available only to a defendant who is resisting a claim on the ground that he is not a party to the contract. The Court went on to state that since Petitioner here is a party to the contract, it is bound by the arbitration proviso therein, notwithstanding the status of the claimant.

1. The distinction drawn by the Supreme Court of Pennsylvania is specious and invalid and divests Petitioner of its constitutional due process right of access to the Courts.

2. If the decision of the Supreme Court of Pennsylvania is not overturned, insurance companies will be compelled to arbitrate the rights of strangers to the insurance contract, who were not intended to be covered thereunder.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

HAROLD B. MARCUS,
DETWEILER, SHERR & HUGHES
and
BERTRAM BENNETT,
JENKINS, BENNETT & JENKINS,
Attorneys for Petitioner.

APPENDIX

COURT OF COMMON PLEAS

No. 2645 June Term, 1969

Preferred Risk Mutual Insurance Company
v.
Lydia Martin
and
American Arbitration Association
and
Stanton Berkowitz, Esquire

MEMORANDUM OPINION

This case involves the issue of whether a claim under the uninsured motorist coverage of an insurance policy is solely for the determination of the arbitrator. We have declined to accept jurisdiction. Since defendant's counsel has very graciously conceded the correctness of this decision, we need merely add that our conclusion is reached on the authority of Harleysville Mutual Insurance Co. v. Medycki, 431 Pa. 67 (1968) and cases cited therein.

By the Court:
(s) Gold,
J.

Dated: Nov. 7, 1969

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IN THE SUPREME COURT OF PENNSYLVANIA

Eastern District

No. 152 January Term, 1970

Preferred Risk Mutual Insurance Company, Appellant

v.

Lydia Martin and American Arbitration Association and Stanton Berkowitz, Appellees

Appeal from the Decree of the Court of Common Pleas of Philadelphia County, No. 2645 June Term, 1969

OPINION OF THE COURT

O'Brien, J., Filed: January 9, 1970

This is an appeal by Preferred Risk Mutual Insurance Company [Preferred Risk] from the decree of the Court of Common Pleas of Philadelphia County dismissing a complaint in equity which sought to enjoin an arbitration scheduled under the uninsured motorist provision of an insurance policy contract which it had issued. The appellees are Lydia Martin (the claimant under the policy), the American Arbitration Association, under whose auspices the arbitration was to be held, and the arbitrator chosen by the Association.

The accident which gave rise to the arbitration claim occurred on September 8, 1967, when, it is alleged, Miss

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Martin was a passenger in an automobile and sustained serious injuries as the result of the negligence of the driver of that automobile who was an "uninsured motorist" within the terms of the policy.

Miss Martin is the foster child of Mr. and Mrs. Eli Swartz, having resided with them for eight years prior to the accident. At the time of the accident, Mr. Swartz was covered by an insurance policy with Preferred Risk which contained uninsured motorist coverage. With respect to such coverage, the policy contained the following language:

> "If *any person* makes claim hereunder and the company does not agree that *such person* is legally entitled to recover damages from the owner or operator of an uninsured automobile because of bodily injury to the insured, or does not agree as to the amount of payment which may be owing under this part, then, upon written demand of either, *the matter or matters upon which such person and the company do not agree shall be settled by arbitration in accordance with the rules of the American Arbitration Association* and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. *Such person and the company* each agree to consider itself bound and to be bound by any award made by the arbitrators pursuant to this part." (Emphasis added.)

In accordance with the above provision, Miss Martin instituted arbitration proceedings before the American Arbitration Association. Prior to the date of the arbitration, Preferred Risk filed the present action to enjoin the

arbitration on the ground that the policy did not cover Miss Martin, a foster child. The policy affords coverage, inter alia, to "the named insured and, while residents of the same household, the spouse of such named insured and the relatives of either".

Appellees preliminarily objected to the complaint in equity on jurisdictional grounds and also by way of demurrer. The objections were sustained and the complaint dismissed. Preferred Risk has now filed this appeal from the decree of the court below dismissing the complaint.

It is perfectly clear that the court below properly sustained the preliminary objections. In a long series of cases, we have consistently held that all disputes arising under the uninsured motorist clause of the standard insurance policy must be settled by arbitration. Allstate Ins. Co. v. Taylor, 434 Pa. 21, 252 A. 2d 618 (1969); Merchants M. I. Co. v. Am. Arb. Assn. (et al.), 433 Pa. 250, 248 A. 2d 842 (1969); Harleysville M. Ins. Co. v. Medycki, 431 Pa. 67, 244 A. 2d 655 (1968); Nat. Grange M. Ins. Co. v. Kuhn, 428 Pa. 179, 236 A. 2d 758 (1968). In Kuhn, we stated the principle applicable to all of these cases (428 Pa. at 185): "The aribtration clause, in our view, indicates that the parties contemplated one method, and one method only, for the resolution of disputes under this coverage. That method was arbitration and all such disputes should be so decided."

In our most recent case, Allstate Ins. Co. v. Taylor, supra, construing the identical arbitration clause here at issue, we specifically held that the question of coverage —whether a person comes within the definition of "Insured" under the policy—is to be determined by arbitra-

tion. In fact, appellant concedes that Taylor is indistinguishable from the instant case and asks that it be overruled. Appellant urges that in Taylor, we overlooked Goldstein v. Int. L. G. W. U. et al., 328 Pa. 385, 196 Atl. 43 (1938). That case, which held that one who denies that he is a party to an arbitration agreement is entitled to a judicial determination of the question, is inapplicable to the instant case. There is no question whether Preferred Risk is a party to the arbitration agreement. The only question is whether the claimant is an "Insured", as the term is defined in the policy. This is a matter which the policy requires to be settled by arbitration, and we have so held in *Taylor*.

The decree of the court below is affirmed, costs to be borne by appellant.

Mr. Justice Jones concurs in the result.

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